



An
Bord
Pleanála

Inspector's Report ABP-320557-24

Development	Alteration to development previously approved under PA. Ref. 23/251.
Location	Lands south of Tralee Bay and Wetlands Eco and Activity Centre, Ballyard, Tralee, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	24/60319
Applicant(s)	Tello Developments (Ballyard) Limited
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Tello Developments (Ballyard) Limited
Observer(s)	None
Date of Site Inspection	18/02/2025
Inspector	Phillippa Joyce

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
4.0 Planning History.....	5
5.0 Policy Context.....	7
6.0 The Appeal	10
7.0 Planning Assessment	11
8.0 Appropriate Assessment.....	23
9.0 Recommendation.....	24
10.0 Reason and Considerations	24
Appendix 1: Environmental Impact Assessment – Pre-Screening	26
Appendix 2: Environmental Impact Assessment – Preliminary Examination	27

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Ballyard, c.1km southwest of Tralee town centre. To the north of the site are greenfield lands (marsh, wetlands), the Tralee Bay Wetlands Centre and access road (connected to Ballyard Road), to the south are detached residences fronting onto a local public road/ cul-de-sac (Lover's Lane), while to the east and west are further greenfield lands (fields, wooded area).
- 1.2. The site is rectangular in configuration and measures c.1.98ha. The site (redline boundary) corresponds with the extent of the lands indicated as being under the applicant's control (blue line boundary). The site predominantly aligns with the site boundary of the parent permission, PA Ref. 23/251 (except for the omission of the route of the emergency access roadway in the southwest corner of the site, as discussed in section 2.0 below).
- 1.3. The site is predominantly greenfield in nature (field, marsh). There is a partially constructed access road and hardstanding area with temporary structures/ containers located in the northeast corner of the site. The topography of the site is notable, with ground levels falling in a northerly direction from Lover's Lane across the site towards the Tralee Bay Wetlands Centre.

2.0 Proposed Development

- 2.1. The proposed development comprises amendments to the extant permission, PA Reg. Ref. 23/251, a residential scheme of 25 dwelling units and ancillary works.
- 2.2. Firstly, permission is sought to omit Condition 10 from the parent permission and remove the associated emergency access route from layout of the proposed scheme. The emergency access road is located in the southwestern corner of the site and connects the proposed scheme to Lover's Lane. Secondly, permission is sought for revised landscaping and boundary treatments and ancillary works.
- 2.3. As indicated Dwg No. P104: Proposed Site Layout Plan of the application, the emergency access road is revised from being a through-road to a turning head, and the area so released is repurposed as increased garden areas for House Units 14 and 15. From a review of Dwg No. P603 Existing and Proposed Contextual

Elevations 6-6 and 8-8, I identify the provision of a 1.8m high charred timber clad fence as a new boundary on the southern side of the turning head.

3.0 Planning Authority Decision

3.1. Summary of the Decision

3.1.1. On 18th July 2024, the planning authority issued a Notification of Decision to Refuse Permission for one reason, as follows:

1. *The omission of Condition No. 10. from Planning Permission PA Ref: 23/251, by not providing a suitable emergency access route, would endanger the health or safety of persons occupying the proposed development, would contravene materially a condition attached to an existing permission for development and as such, would not be in accordance with the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Report

The planner's report is the basis for the planning authority decision. The key items included in which can be summarised as follows:

- Cites Condition 10 of the parent permission PA Ref. 23/251 (see section 4.0 of this report below).
- Cites the rationale for the inclusion of Condition 10 in the planner's report of PA Ref. 23/251 – the proposed emergency access route from Lover's Lane ensures that access to the site can be facilitated during a design flood event.
- Cites the applicant's rationale for the proposed removal of Condition 10 – wording of Condition 10(a) repurposes the emergency access route into a standard secondary access route which could be used regularly, adjoining landowner will no longer provide consent for the previously agreed emergency access route and no alternative emergency exit option can be identified, the potential flooding of the primary access road would occur on a very limited basis, such flooding would not prevent emergency services from accessing

the scheme, via its primary entrance, in the event of an emergency within the residential scheme, likely that in such events residents would be directed to remain at home by emergency services within the area.

- Cites and defers to the position of the internal report from the Flooding and Coastal Protection Unit.
- Requirement for EIA and AA screened out.

3.2.2. Other Technical Reports

Flooding and Coastal Protection Unit: Condition 10 of PA Ref. 23/251 is appropriate and the rationale for its removal is not accepted.

Housing Estates Unit: raises several issues including in respect of roads, signage, parking, public lighting, drainage.

County Archaeologist: Conditions attached to the parent permission continue to apply.

3.3. Prescribed Bodies

None received.

3.4. Third Party Observations

3.4.1. None received.

4.0 Planning History

Appeal Site

ABP 316863-23, PA Ref. KE-C6-RZLT-30

An Bord Pleanála confirmed the planning authority determination to include the site on the Residential Zoned Land Tax draft map. Decision made on the 15th August 2023 on foot of an appeal of the planning authority determination by Paul Mullins.

PA Ref. 23/251

Permission granted on the 3rd May 2023 to the applicant for a residential development comprising of 25 detached residential dwellings (20 no. 4-bed 2-storey

and 5 no. 5-bed 3-storey) and rear garden ancillary buildings for 8 of the dwellings. The proposed development also provides for 56 no. car parking spaces, shared open spaces, a site entrance feature, utilisation of the existing vehicular and pedestrian access, provision of emergency access from lover's lane, alterations to a shed on Lover's Lane, and all associated and ancillary site works necessary to facilitate the development.

Permission was granted subject to 18 no. conditions.

Condition 10, subject of this appeal case, is as follows:

10. Prior to the commencement of development, the applicant shall submit details of the following for the written approval of the Planning Authority:

a) Right of way/ legal arrangement(s) shall be put in place to ensure continuous and permanent rights of access by the each and all residents (and their successors) of the dwelling units within the site as well as any third parties required for emergency access.

b) Wayleave/ legal arrangement(s) shall be put in place to ensure a wayleave is in place for the purpose of the ongoing maintenance of the access route and the provision of any services or future services.

c) Measures shall be put in place to ensure that the proposed emergency access route is not blocked or obstructed by any third parties or others, especially within the curtilage of the neighbouring yard.

d) Details of the appropriate signage and road markings to be put in place to designate it as an emergency access route shall be submitted.

e) Assessment of the existing farm gates and concrete yard proposed for retention shall be undertaken to ensure they are fit for purpose and have the required residual design life. If deemed substandard then details of the proposed improvements to bring up to current building standards shall be submitted.

Reason: *In the interests of orderly development.*

PA Ref. 21/678

Permission refused on the 28th October 2021 to the applicant for a residential scheme of 25 detached dwellings (same as that permitted PA Ref. 23/251).

Permission was refused for one reason, as follows:

1. *The access road serving the site is subject to flooding and is unsuitable to facilitate access to residential development in the absence of a high standard of flood protection with allowance for climate change and future sea level rises. The proposed development would be premature pending the outcome of the Tralee Flood Relief Scheme currently under assessment by Kerry County Council in partnership with the Office of Public Works and would, therefore, be contrary to the proper planning and sustainable development of the area.*

5.0 Policy Context

5.1. Kerry County Development Plan 2022-2028

- 5.1.1. The applicable development plan for the appeal is the Kerry County Development Plan 2022-2028 (CDP). Volume Two of the CDP contains the Tralee Town Development Plan, which indicates the zoning and flood maps for the town.
- 5.1.2. For the Board's clarity, the preparatory process for the Draft Tralee Municipal District Local Area Plan has commenced (which will supercede the Tralee Town Development Plan). However, due to the preliminary status, this does not affect the local policy context for the determination of this appeal case.
- 5.1.3. Key designations and policy objectives include the following:
 - The site is subject to zoning objective 'R1' New/ Proposed Residential which seeks to '*Provide for new residential development in tandem with the provision of the necessary social and physical infrastructure*' (Map C, Tralee Town Development Plan, Volume Two, pg.55).
 - The northern boundary of the site and the main access road to the site are located within the designated Flood Zones A and B, while the remainder of the site is within Flood Zone C (Map B, Tralee Town Development Plan, Volume Two, pg.61).

- Objective KCDP 11-65 commits to take into consideration areas identified at risk of flooding ... to inform development management decisions....
- Objective KCDP 11-66 commits to have regard to and implement the recommendations and provisions of the Planning System and Flood Risk Management guidelines (DoEHLG 2009).
- Objective KCDP 11-73 seeks to support measures for the management and protection of coastal resources and communities against coastal erosion, flooding and other threats.
- Objective TR 121 seeks that development proposals avoid the identified flood risk area (Flood Zones A and B)...and consider flood resilient or flood resistant construction design methodologies.

5.2. Natural Heritage Designations

- 5.2.1. The appeal site is not located in or immediately adjacent to a European site, a Natural Heritage Area (NHA) or a proposed NHA (pNHA).
- 5.2.2. The European site designations in proximity to the appeal site include (as measured at closest proximity between boundaries):
 - Tralee Bay Complex SPA (site code: 004188) is c.250m to the west.
 - Tralee Bay and Magharees Peninsula, West To Cloghane SAC (site code: 002070) is c.295m to the west.
 - Slieve Mish SAC (site code: 002185) is c.2.4km to the south.
 - Ballyseedy Wood SAC (site code: 002112) is c.2.98km to the east.
- 5.2.3. The pNHA designations in proximity to the appeal site include:
 - Tralee Bay and Magharees Peninsula, West To Cloghane pNHA (site code: 002070) is c.295m to the west.

5.3. Screening for Environmental Impact Assessment

Pre-Screening for Environmental Impact Assessment

- 5.3.1. For the purposes of EIA, the 'project' comprises the extant permission incorporating the proposed development. The parent permission involves the construction of a

smallscale residential scheme (25 dwelling units) located on an outer suburban site (a built-up area) measuring c.1.98ha. The proposed development includes the omission of an access road and revised landscaping and boundary treatments.

5.3.2. The project is sub-threshold in terms of mandatory EIA requirements arising from Class 10(b)(i) and/ or (iv) and Class 13(a)(ii) of the 2001 Regulations (as presented in Appendix 1 of this report below).

5.3.3. As such, a preliminary examination of the proposed development is necessary to establish whether the proposed sub-threshold development would be likely to have significant effects on the environment and should be the subject of EIA.

Preliminary Examination for Environmental Impact Assessment

5.3.4. Based on the criteria in Schedule 7 of the 2001 Regulations, I have carried out a preliminary examination of the proposed development (included in Appendix 2 of this report). The criteria include the characteristics of the project, the location of the site, and the types and characteristics of potential impacts on the environment.

5.3.5. I have had regard to the nature and scale of the proposed development, the location of the site on zoned and serviced lands within an existing built-up area and outside of any sensitive and/ or designated location, the existing pattern of development in the vicinity, and the information submitted within the parent permission, application, and appeal.

5.3.6. I have also had regard to the planning authority's EIA screening decision for the parent permission (planning officer's report) and the AA screening decision (Biodiversity Officer, Environmental Assessment Unit's report). These defer to information provided in the parent permission, including the applicant's AA Screening Report. The planning authority concluded the need for EIA could be reasonably excluded.

5.3.7. As the need for EIA was screened out for the parent permission, and as the proposed development involves the removal of an access road and revisions in landscaping and boundary treatments, I find that is reasonable and logical to conclude that the proposed development will not result in any new and/ or additional impacts that would give rise to likely significant effects on the environment.

- 5.3.8. Accordingly, for the project, I have concluded that there is no real likelihood of significant effects on the environment arising from the proposed development, and that the need for an environmental impact assessment and the submission of an Environmental Impact Assessment Report for the proposed development is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. This is a first party appeal against the decision of the planning authority to refuse permission for the proposed development. The appeal grounds include the following:

Background Context

- The applicant previously engaged with an adjoining landowner to provide a right of way access into the site which would be usable in the sole event of an emergency.
- The wording of Condition 10(a) is problematic as it essentially repurposes the emergency access route into a standard secondary access route which can be used daily by all future residents of the scheme.
- The adjoining land owner will no longer provide consent for the previously agreed emergency access route and no alternative emergency exit option can be identified.
- The scheme can no longer be delivered by the applicant.

Rationale for the Removal of Condition 10

- The applicant queries the necessity for the inclusion of an emergency access route in the first instance.
- A Flood Risk Assessment (FRA) was undertaken for the parent permission on the basis of the Council's instruction due to coastal flooding events of the adjoining road network.
- The development subject of the parent permission did not require a justification test.

- The FRA found the residential component would be at no direct risk of flooding, would not increase flooding elsewhere, included measures to minimise flood risk, and to ensure that residual flood risks to the area would be managed to an acceptable level.
- The proposal is indirectly affected by coastal flooding events, that these events would occur on a very limited basis and not present any significant issues to future residents of the scheme.
- Localised flooding would not prevent emergency services from accessing the scheme through its main entrance. In the event of an emergency, it is likely that the residents would be directed to remain at home by emergency services.
- The nature of the localised flooding is such that it occurs entirely outside the site's boundary, and the implementation of Condition 10 would have no impact on minimising flood risk to people, property, or the environment.

Request for Condition 10 to be Removed

- Acknowledges that the applicant proposed the access route in good faith and on the assumption that it would serve as such and only in the event of an emergency.
- The adjacent landowner will no longer provide consent and unless the condition is removed by the Board, the permitted residential development will not be delivered.

6.2. Planning Authority Response

6.2.1. No response has been received from the planning authority on the appeal.

6.3. Observations

6.3.1. None received.

7.0 Planning Assessment

7.1. Introduction

7.1.1. Having reviewed the appeal, examined the documentation on the case file, inspected the site, and had regard to the relevant policy context and planning guidance, I consider that the main issues in the appeal to be as follows:

- Planning History
- Proposed Amendments
- Design and Layout
- Flood Risk

I propose to address each item in turn below.

7.2. Planning History

7.2.1. The planning history at the site is a key consideration in the determination of this appeal. Relevant applications include PA Ref. 21/678 and PA Ref. 23/251 (see section 4.0 of this report above). An overview of the planning history is necessary to gain an understanding of the appeal grounds as cited by the applicant.

Overview

7.2.2. PA Ref. 23/251 is the parent permission for the proposed development. The appeal grounds include the prohibitive nature of Condition 10 of PA Ref. 23/251 on the development of the site, and a rationale for its omission and the associated removal of the emergency access road from the layout of the permitted scheme.

7.2.3. PA Ref. 21/678 and PA Ref. 23/251 comprise similarly designed residential developments (25 detached dwellings) with a main vehicular entrance (located in the northeast corner of the site) served by the existing access road, which also serves the Tralee Bay Wetlands Centre, off Ballyard Road. Under PA Ref. 23/251, an additional emergency access road was incorporated into the design of the scheme. Located in the southwest corner of the site, the emergency access road connects the scheme to the public road to the south, Lover's Lane.

PA Ref. 21/678 – Refusal of Permission

7.2.4. I have reviewed PA Ref. 21/678 (applicant's documentation) and the planning authority's assessment (including the reports of the Flooding and Coastal Protection Unit). The planning authority highlighted that the access road to the Tralee Bay Wetlands Centre (also proposed to serve the scheme) flooded in December 2015.

Through further information (FI), the applicant was requested to undertake a flood risk assessment (FRA), to outline measures to ensure safe access and egress to the scheme for the design flood events, and to submit proposals to address any residual risks.

- 7.2.5. The applicant submitted a FRA in the FI response, which the planning authority found to lack measures to ensure that the residual risks to the area and the proposal could be managed to an acceptable level. This was in respect of the adequacy of existing flood protection measures, of the design, implementation and funding of any future flood risk management measures, and/ or of provisions for emergency services access.
- 7.2.6. The planning authority concluded that the main access road to the site floods and would continue to flood more regularly in the future, that the road would be unsuitable to serve a residential scheme as the necessary measures securing a high standard of protection with allowances for climate change and rising sea levels were absent, and that as the subject area is located within the Tralee Flood Relief Scheme area (which was being undertaken with the OPW at the time), the proposal would be premature until the outcome of the preferred flood relief scheme option had been agreed and finalised. On the basis of the above, permission for the scheme was refused.

PA Ref. 23/251 – Grant of Permission

- 7.2.7. Under PA Ref. 23/251, the layout of the scheme remained similar to that of PA Ref. 21/678 (use of existing vehicular entrance, access road off Ballyard Road, proposed dwellings served by a looped internal access road). The key change to the layout is the inclusion of an emergency access road as a spur from the internal road.
- 7.2.8. The emergency access road, located in the southwest corner of the site, connects the permitted scheme to the public road to the south, Lover's Lane. The emergency access road is routed to the western side of a detached residence with ancillary shed structures and incorporates an existing gated entrance serving same onto Lover's Lane.
- 7.2.9. I have reviewed PA Ref. 23/251 and note that the application was accompanied by a letter of consent from the adjacent property owner (name, address, signature) consenting to the applicant making the application (with a description of development

provided including, of relevance to the landowner, '*...provision of emergency access from Lover's Lane, alterations to the shed at Robin Hill, Lover's Lane...*').

- 7.2.10. For a fuller understanding of the emergency access road, I direct the Board to the parent permission and the following plans and particulars; Dwg No. P103: Proposed Site Layout Plan, Dwg No. P105: Proposed Detail Plan of Emergency Access Road, Dwg No. P401: Proposed Elevations through Emergency Access Road, and Photomontages (pgs. 6-7). The route, design, dimensions, construction, finishes, boundaries, implications for the adjacent property to the west (demolition of walls, provision of gate and pillars, alterations to the western gable of the roadside shed) are evident.
- 7.2.11. I note that the planning authority (report of the Flooding and Coastal Protection Unit) was satisfied that the newly proposed emergency access road to Lover's Lane would ensure that access to the site could be facilitated in the event of the main access road being flooded. The provision of the emergency access road allayed planning authority concerns regarding safe access and egress to the scheme, thereby overcoming the previous reason for refusal in PA Ref. 21/678. On the basis of the above, permission for the scheme was granted subject to 18 conditions.
- 7.2.12. The wording for Condition 10 of PA Ref. 23/251 comes from the report of the Flooding and Coastal Protection Unit. The condition includes five sub-items seeking the establishment of right of way, way leave, and/ legal arrangement(s), measures for the non-obstruction, maintenance, and management of the road, design details (signage, road markings) for, and an assessment of/ measures to ensure the existing farm gates and yard have the necessary residual design life.

PA Ref. 24/60319 – Proposed Development and First Party Appeal

- 7.2.13. The proposed development seeks amendments to the parent permission, PA Ref. 23/251. The amendments include the omission of Condition 10, the removal of the associated emergency access route, revised landscaping and boundary treatments, and ancillary works. The emergency access road is revised from being a through-road to Lover's Lane to a turning head, and the area so-released is repurposed as increased garden areas for House Units 14 and 15.
- 7.2.14. I have reviewed PA Ref. 24/60319 and highlight to the Board that a minimal number of plans and particulars are included in the application documentation which relate to

the emergency access road of the permitted scheme. Similarly, in the first party appeal, there are limited details provided on the emergency access road.

Accordingly, I have considered it necessary to undertake this detailed Planning History subsection to assist the Board in gaining a full understanding of the context for the appeal.

- 7.2.15. In PA Ref. 24/60319, the key plan is Dwg No. P103: Site Layout Plan as Approved under Planning Reg. Ref. 23/251. I have compared Dwg No. P103: Site Layout Plan as Approved under Planning Reg. Ref. 23/251 in the application to Dwg No. P103: Proposed Site Layout Plan of the parent permission.
- 7.2.16. I highlight to the Board that, in the former plan, the redline boundary (i.e., solid) indicated for the site is that of the proposed development and does not correspond correctly with the redline boundary of the parent permission which is presented in the latter plan (as maybe implied from the drawing's title). Importantly, in the former plan the route of the emergency access road connecting the permitted scheme to Lover's Lane is instead indicated as a broken redline.
- 7.2.17. That being, based on the plans and particulars included in PA Ref. 24/60319 and a review of or reliance on Dwg No. P103: Site Layout Plan as Approved under Planning Reg. Ref. 23/251, it could be construed (potentially and incorrectly) that the emergency access road had not been fully within the redline boundary of the parent permission.
- 7.2.18. Allied to this potential for misunderstanding of the planning status of the emergency access road, are images and commentary included in the applicant's Planning Appeal document (pg. 3). Figure 2.0 is referred to as 'Site plan granted under Reg. Ref. 23/251' yet excludes the full extent of the emergency access road. Figure 3.0 indicates the fuller extent of the emergency access road (in yellow, not outlined in red), and a redline boundary. Importantly, the redline boundary provided is that of the proposed development, as indicated in Dwg No. P103: Site Layout Plan as Approved under Planning Reg. Ref. 23/251. Commentary associated with Figure 3.0 states: *'We note that no works would be undertaken outside of the red line area of the site with the extent of the access route provided in site adjoining an existing laneway to the south'*.

Conclusion

7.2.19. In conclusion, in the interest of clarity and for the avoidance of doubt, I confirm that the emergency access road is an integral component of the parent permission, its inclusion in the layout of the permitted scheme was determined by the planning authority to overcome the refusal reason cited for PA Ref. 21/678, and the planning authority granted permission for PA Ref. 23/251 due to the scheme being served by an alternative access option in the event of flooding of the main access road.

7.3. Proposed Amendments

- 7.3.1. The appeal grounds include that Condition 10 has repurposed the emergency access route into a standard secondary access route, the adjoining landowner will no longer provide consent for the access route, and unless the condition is removed by the Board, the permitted residential development will not be delivered.
- 7.3.2. In its assessment, the planning authority (Flooding and Coastal Protection Unit) found Condition 10 to still be appropriate and that its removal, on the basis that it has repurposed the emergency access route to a standard secondary access road, to be unjustified.
- 7.3.3. I have reviewed the wording of Condition 10 and considered the positions of the applicant and planning authority. I have cited the full wording of Condition 10 (see section 4.0 of this report above) and identified the five sub-items in the previous subsection (see 8.2 Planning History).
- 7.3.4. Sub-item Condition 10(a) requires a right of way/ legal arrangement(s) to be put in place to the route 'for emergency access'. I consider this sub-item to be clear in establishing that any such right of way would be for the purposes of managing/ in the event of an emergency. The planning authority's assessment expands on the nature of same, outlining that a legal arrangement would be necessary to ensure that future residents would have the right to use the emergency route during a significant flood event when access to and from the primary road would not be deemed safe.
- 7.3.5. I acknowledge that Condition 10(a) has a broad application, referring to the right of way being 'continuous and permanent' and available to 'each and all residents...their successors...as well as any third parties'. However, I do not consider that these references repurpose the use of the emergency access route to that of a standard access route. While the application of the right of way may be wide, the frequency of use remains as intended, restricted to/ on an emergency basis.

- 7.3.6. Importantly, while the appeal grounds focus on Condition 10(a), I advise that Condition 10 should be read and considered in its totality. I note the remaining sub-items of Condition 10(b)-(e) relate to and expand on the design, management, and maintenance of the access road as an emergency access route.
- 7.3.7. I do not find there to be any component of Condition 10 which repurposes the use of the emergency access route by future residents to, or which infers daily access and frequency of use commensurate to, that of a standard access road. The stated reason for Condition 10 is '[i]n the interests of orderly development, and I consider this reason continues to pertain to the permitted scheme. I consider that Condition 10 satisfies the criteria for conditions, as outlined in the Development Management, Guidelines for Planning Authorities, 2007, by being necessary, reasonable, relevant to planning and to the development.
- 7.3.8. As is discussed in subsection 8.5 Flood Risk below, the emergency access route was required to be incorporated into the scheme as a mitigation measure, to minimise flood risk and ensure compliance with the planning guidelines on same. I do not consider that the appeal grounds (i.e., the applicant's interpretation of Condition 10(a), the withdrawal of the adjacent landowner's agreement to the provision of the access route, and the permitted scheme not being developed) are sufficient to justify the omission of Condition 10 and the removal of the associated emergency access road from the permitted scheme under PA Ref. 23/251.
- 7.3.9. Further, I have not identified any written withdrawal of consent from the adjacent landowner to the west in the case file (application and/ or appeal). This is in contrast to the documentation provided in the parent permission, PA Ref. 23/251, which included a letter of consent, and several plans and particulars for the access road (several are particularly detailed, including photomontages of same).
- 7.3.10. As I outlined in subsection 8.2 Planning History above, I consider that the implications for the adjacent property (purpose and use of the route, demolition of walls, provision of gate and pillars, alterations to the western gable of the roadside shed) would have been evident at the time that PA Ref. 23/251 was lodged with the planning authority.
- 7.3.11. I consider that the need for a legal arrangement to be established to ensure the delivery and management of the emergency access route (as is the subject of

Condition 10) could have been anticipated. That being, I do not find there to be any requirement or restriction added to Condition 10 that could not have been reasonably anticipated by the applicant (and/ or other affected parties) at the time of making PA Ref. 23/251, having secured the consent of the adjacent landowner and with the level of detail provided in respect of the emergency access road.

Conclusion

- 7.3.12. In conclusion, there is a planning history of permissions refused at the site due to the interconnected issues of flood risk and access. The inclusion of the emergency access road in the parent permission was a determining factor in the planning authority's decision to grant permission for PA Ref. 23/251. I do not concur with the appeal grounds and consider the applicant has failed to sufficiently justify the proposed development. Accordingly, I do not recommend that Condition 10 and the associated emergency access route are omitted from the permitted scheme, PA Ref. 23/251.

7.4. Design and Layout

- 7.4.1. With regard to the design and layout of the proposed development, I have compared the site layouts of the scheme as indicated on Dwg No. P103: Proposed Site Layout Plan of parent permission, PA Ref. 23/251 and Dwg No. P104: Proposed Site Layout Plan of the proposed development.
- 7.4.2. In the proposed development, the emergency access route, located to the southwest of the site, is revised from being a through-road to Lover's Lane to an in-site turning head. The area so-released is revised as increased rear/ side garden areas for House Units 14 and 15, with revised landscaping and boundary treatments.
- 7.4.3. From a review of Dwg No. P603 Existing and Proposed Contextual Elevations 6-6 and 8-8, I identify the provision of a 1.8m high charred timber clad fence as a new boundary on the southern side of the turning head addressing a communal area to the north.
- 7.4.4. The removal of access routes to, from or through residential schemes typically causes a loss of permeability for all road users and results in an adverse impact on the amenity of future residents. However, in this instance, I do not consider the

proposed removal of the emergency access road to have such an adverse impact as the route is not intended for unrestricted, unfettered use by road users.

Conclusion

- 7.4.5. In conclusion, I do not consider there to be any issues arising in respect of design and layout of the proposed revisions. In the event of permission being under consideration by the Board, I would consider it appropriate to specify that Condition 16 of PA Ref. 23/251 would pertain in respect of proposed boundary finishes (requires prior to commencement agreement with the planning authority on a boundary treatment plan and prohibiting wood as a finish onto communal areas).

7.5. Flood Risk

Appeal Grounds

- 7.5.1. The applicant raises several issues relating to flood risk in the appeal grounds. These include questioning the need for the emergency access route in the first instance, and reference to the FRA undertaken for the parent permission which found the residential component was not at direct risk of flooding, nor would increase flooding elsewhere.
- 7.5.2. The applicant also submits that the scheme is indirectly affected by coastal flooding events (occur on a very limited basis, presents no significant issues to future residents), which is of a localised nature (would not prevent emergency services accessing the scheme, residents directed to remain at home, any flooding occurs entirely outside the site's boundary), and that implementing Condition 10 of PA Ref. 23/251 would have no impact on minimising flood risk to people, property, or the environment.

Planning Authority Assessment

- 7.5.3. The findings of the Flooding and Coastal Protection Unit were a key consideration in the planning authority's assessment of the proposed development, and the basis for the decision to refuse same.
- 7.5.4. I have reviewed the report and note the following:
- The site is acknowledged as being located in Flood Zone C, however the primary access route to the scheme is described as 'a relatively low-lying road which is prone to frequent and recurring flooding events'.

- The report refers to coastal flood depth models developed for the Tralee Flood Relief Scheme. Four models are referred to with different design flood events (i.e., annual exceedance probability (AEP)) for every 2 years (50%) and 10 years (10%), for the present-day scenario (PDS) and the mid-range future scenario (MRFS).
- Flood extent images, which the site and main access road, are provided from the four models, as follows:
 - 50% AEP Coastal Depth PDS
 - 50% AEP Coastal Depth MRFS
 - 10% AEP Coastal Depth PDS
 - 10% AEP Coastal Depth MRFS
- In a 50% AEP PDS event, significant flood depths along sections of the primary access road (c.0.5m-1m) are indicated, which are described as problematic even for emergency access vehicles.
- During a 10% AEP PDS event, the primary access road would not be accessible with flood depths greater than 1m predicted.
- In the MRFS events, the frequency and depths of flooding along the primary access road are found to increase significantly at higher return periods and when sea level rise is factored in (+0.5m by 2180).
- The depths of flooding experienced and predicted along the primary access route are described as significant and considered to cause difficulties for emergency access vehicles with depths of more than 1m during the lower return periods.
- The report concludes that Condition 10 is necessary as it ensures that a safe emergency access and egress route is available all future residents during a flooding event.

Assessment of Flood Risk

- 7.5.5. On review of the first party appeal, I note the applicant's case is predominantly statement-based, with the FRA undertaken for the parent permission being relied upon (included as an appendix to the appeal). The applicant has not submitted any

new documentation responding to, or counter evidence addressing, the historic and/or predicted flood events of the primary access road (as outlined by the planning authority).

- 7.5.6. In the appeal grounds, the applicant's position remains that as submitted in the application documentation for the proposed development. The permitted scheme did not require a justification test in the FRA, the site is affected by indirect localised flooding (which will not significantly affect the permitted scheme, nor which would be affected by its development), and therefore the need for the emergency access route is questioned.
- 7.5.7. While I note the findings of the FRA and that a justification test was not required for the permitted development, the flooding of the site is not main issue in this appeal, it is the flooding of the main access road. Contrary to the applicant's position, the FRA for the permitted scheme is not comparable with FRAs of conventional residential developments located in Flood Zones C.
- 7.5.8. Such developments would not typically be reliant upon on a single access route which has an established history of existing flooding and is known to be vulnerable to future flooding on an increasingly regular basis. That being, the context for the proposed development is notable in respect of flood risk and I do not concur with the applicant's position.
- 7.5.9. Further, from my review of the planning history, it is apparent that PA Ref. 23/251 was positively considered by the planning authority as the newly incorporated emergency access route would serve as an alternative access point, thereby facilitating safe access and egress to the scheme in the event of a flood related emergency. The planning authority's assessment also refers to the requirement for an alternative emergency access as ensuring compliance with the requirements of the planning guidelines.
- 7.5.10. In relation to flooding of the primary access road and its impact on the permitted scheme, I do not find the applicant's position that emergency vehicles could pass on the road and that emergency services would likely instruct future residents to stay indoors during such an event to be substantiated or an acceptable basis for the proposed development.

Tralee Flood Relief Scheme

- 7.5.11. The appeal site and main access road are within the 'scheme area' of the Tralee Flood Relief Scheme (www.kerrycoco.ie/wp-content/uploads/2021/11/Tralee_FRS-Newsletter-No-1-November-2021.pdf).
- 7.5.12. The refusal reason cited for PA Ref. 21/678 included reference to the residential development being premature pending the finalisation of the Tralee Flood Relief Scheme. As outlined previously, the planning authority (Flooding and Coastal Protection Unit) refers to the coastal flood depth modelling undertaken for the Scheme in its assessment of the proposed development. As such, I consider the status of the Scheme to be a relevant matter.
- 7.5.13. On review of available and reliable sources of information, I confirm to the Board that in a response to a parliamentary question on the 3rd April 2025 (www.oireachtas.ie/en/debates/question/2025-04-03/158/), the Government indicated that the identification of emerging options in the scheme is anticipated in Q3 of 2025, that the options will identify the type of flood defence measures required for both fluvial and coastal flooding within the scheme area, and that planning for the scheme will be submitted in Q4 2026.
- 7.5.14. I consider the planning authority's assessment of the proposed development in PA Ref. 21/678 (i.e., to refuse permission for the scheme served by one entrance and accessed by a main road vulnerable to coastal flooding), and reference to and reliance on the coastal flood depth models developed for the Tralee Flood Relief Scheme, to continue to be of relevance to the assessment of the proposed development.
- 7.5.15. At the time of assessment, therefore, it is outstanding whether flood defence measures will be included in an option to reduce and/ or manage coastal flood risk of the main access road. Accordingly, in the absence of same, I do not consider there to be a substantive basis for the omission of Condition 10 and associated removal of the emergency access road.

Conclusion

- 7.5.16. In conclusion, from a review of the information on the case file, there is both existing and future flood risks to the main access road to the permitted scheme, which are known, anticipated, and predictable. The applicant has failed to adequately demonstrate otherwise or provide a sufficiently robust justification for omitting

Condition 10 and removing the emergency access route from the permitted scheme, PA Ref. 23/251.

8.0 Appropriate Assessment

8.1. Stage 1 – Screening Determination for Appropriate Assessment

- 8.1.1. I have considered the project in light of the requirements section 177U of the Planning and Development Act 2000, as amended. For the purposes of AA, the project comprises the extant permission incorporating the proposed development.
- 8.1.2. The subject site is located inland of two European Site designations associated with Tralee Bay (Tralee Bay Complex SPA (004188) is c.250m and Tralee Bay and Magharees Peninsula, West To Cloghane SAC (002070) is c.295m to the west).
- 8.1.3. The proposed development comprises amendments to the parent permission (smallscale residential development) involving the omission of an access road and revised landscaping and boundary treatments.
- 8.1.4. The planning authority's assessment of the parent permission includes an AA screening decision (undertaken by the Biodiversity Officer, Environmental Assessment Unit), which defers to information provided in the parent permission, including the applicant's AA Screening Report (AASR).
- 8.1.5. The planning authority's AA screening decision identified indirect hydrological connection (via surface water) between the site and Tralee Bay waterbodies. However, water quality was found to remain adequate (limited sediment and nutrient input), and with no significant accumulation of organic material in sensitive water bodies. No direct meaningful pathways were identified by or through which surface water, groundwater, waste or other pollutants could reach these receptors from the site, and the separation distances were considered such that, there would not be likely significant effects on the integrity of same.
- 8.1.6. No nature conservation concerns have been raised in the planning appeal.
- 8.1.7. Having considered the nature, scale and location of the proposal, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.
- 8.1.8. The reason for this conclusion is as follows:

- Objective information presented in the AASR and other relevant reports submitted with the parent permission, PA Ref. 23/251.
- Conclusion of the Stage 1 Appropriate Assessment Screening Determination undertaken for the parent permission, PA Ref. 23/251 by the planning authority.
- Nature and scale of the proposed development (i.e., amendments omitting an access road and revising landscaping and boundary treatments).
- Qualifying interests and conservation objectives of the European Sites.
- Absence of any direct meaningful pathways to any European Site.
- Distances from the European Sites.
- Standard pollution controls and project design features that would be employed regardless of proximity to a European Site and the effectiveness of same.

8.1.9. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

8.1.10. Likely significant effects are excluded and therefore Appropriate Assessment, under section 177V of the Planning and Development Act 2000, as amended, is not required.

9.0 Recommendation

Following from the above assessment, I recommend that permission be REFUSED for the proposed development for the reason and considerations set out below.

10.0 Reason and Considerations

1. The proposed development, comprising the omission of Condition 10 and the associated emergency access route from the residential scheme permitted under PA Ref. 23/251, would result in the removal of the emergency access from the scheme provided to serve future residents and emergency vehicles. The applicant has failed to adequately demonstrate that the main access road is sufficient to serve as the only access route to the residential scheme in

design flood events, and that the emergency access route would therefore be unnecessary. As such, the proposed development would contravene materially a condition attached to an existing permission for development, be contrary to the requirements of the Planning System and Flood Risk Management, Guidelines for Planning Authorities, 2009 and be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Phillippa Joyce

Senior Planning Inspector

29th April 2025

Appendix 1: Environmental Impact Assessment – Pre-Screening

1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>			Yes	✓
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			No	
Yes	✓	Class 10(b) Infrastructure Projects Class 13(a) Changes, Extensions....	Proceed to Q3	
No				
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?				
Yes				
No	✓	Class 10(b)(i) and/ or Class 10(b)(iv) Class 13(a)(ii)	Proceed to Q4	
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?				
Yes	✓	Relevant thresholds arising from Classes: - Class 10(b)(i): more than 500 dwelling units. - Class 10(b)(iv): urban development in an area greater than 10ha. - Class 13(a)(ii): result in an increase in size greater than 25% or an amount equal to 50% of the appropriate threshold (Class 10(b)(i)/ (iv)), whichever is the greater.	Preliminary Examination required	
5. Has Schedule 7A information been submitted?				
No	✓	Pre-screening determination conclusion remains as above (Q1 to Q4)		
Yes				

Inspector: _____

Date: _____

Appendix 2: Environmental Impact Assessment – Preliminary Examination

The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations. This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.

Characteristics of proposed development

(In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/ disasters and to human health).

Project (i.e., parent permission incorporating the proposed amendments) comprises the construction of a smallscale low density residential scheme. It differs marginally from the surrounding area, but the differences are not considered to be significant in terms of character or of scale.

Project would cause physical changes to the appearance of the site during the construction and operation (occupation) works, and these would be within acceptable parameters for the receiving area.

No significant use of natural resources is anticipated, and the project would connect into the public water supply and drainage services systems which have sufficient capacity to accommodate demands.

Construction phase activities would result in the use of potentially harmful materials, and cause noise and dust emissions. These would likely be typical of similar construction sites. Conventional waste produced from construction and operational activities would be managed.

Project would not cause risks to human health through water contamination/ air pollution through the design of the scheme, connection to public water services systems, and scale of residential activities arising.

Location of development

(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/ capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones,

Project is not located in, on, or adjoining any European Site, any designated or proposed Natural Heritage Area, or any other listed area of ecological interest or protection.

Based on information included in the parent permission, the site was demonstrated to not contain any protected habitats, plants, or fauna species. Indirect hydrological connection (via surface water) was identified between the site and Tralee Bay waterbodies.

nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).	However, water quality was found to remain adequate (limited sediment and nutrient input), with no significant accumulation of organic material in sensitive water bodies, and no direct meaningful pathways identified by or through which surface water, groundwater, waste or other pollutants could reach these receptors from the site. There are no landscape designations, or architectural heritage designations (protected structures, architectural conservation area) pertaining to/ recorded at the site. Archaeological features were identified at the site through test trenching undertaken for previous planning history.	
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Amelioration of environmental impacts have been incorporated into the project’s design. Mitigation measures would include those required by conditions attached to the extant permission in relation to construction (including archaeological monitoring/ excavation) and operation phases. There are no likely significant effects identified or anticipated in terms of cumulative and/ or transboundary effects.	
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	Yes
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	No

Inspector: _____ **Date:** _____

DP/ ADP: _____ **Date:** _____

(only where Schedule 7A information or EIAR required)